IN THE HIGH COURT OF DELHI AT NEW DELHI

MAC. APP. No. 69/2005

Judgment delivered on: November 12, 2007

State of Haryana & Anr. ..... Appellants
Through: Mr.Vikas Kumar, Advocate.

versus

Sh. Ajay Kumar & Ors. ..... Respondents
Through: Ms.Uma, Advocate.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

KAILASH GAMBHIR, J. Oral:

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By way of this appeal, the appellant seeks to assail the impugned award primarily on the ground that the driver of the offending vehicle has already been acquitted by the Criminal Court and, therefore, no liability of the compensation could have

been fastened on the driver by the Tribunal in a compensation case. It is also stated that there is a discrepancy in the age of the deceased as in the cross-examination of PW-1, the age of the deceased has been stated to be between 25-30 years, but the Tribunal has taken the age of the deceased at the time of his death at 35 years. Yet another contention has been taken by the appellant that no accident involving the bus of the appellant bearing registration No. HR-12-A-1120 took place as no such accident was reported by any person to the appellant either at ISBT, Delhi or at Panchkosi or at Hanumangarh. The contention is that the said bus of the appellant was being followed by another bus bearing registration No. HR-12-A-1121 which was on its way to Hanumangarh and possibly the said bus might have caused the said accident.

I have heard learned counsel for the parties and have perused the record. Mr.Vikas Kumar, counsel for the appellant contended that the testimony of PW-1 could not have been relied upon by the Tribunal as the said witness, Mr.Bishambar Nath was not in the list of prosecution witnesses in the criminal case. The contention of counsel for the appellant is that had the said witness been an eye-witness, then, the police would have taken a

statement under Section 161 of the Criminal Procedure Code and then, also would have examined him as a prosecution witness. Counsel for the appellant also contends that the said discrepancy in the age of the deceased shows that the Tribunal has not properly appreciated the evidence adduced by the respondents on record. On the negligence point, the contention of counsel for the appellant is that once the presence of the said eye-witness itself is in dispute, therefore, it cannot be held that the said bus of the appellant was involved in causing the accident and not the bus which was following the bus of the appellant.

Per contra, Ms.Uma, counsel appearing for the respondent refutes the submission of counsel for the appellant by contending that it is a settled legal position that the acquittal in a criminal case cannot have any effect on the findings of the Civil Court or MACT Court in compensation cases. Counsel further contended that the age of 35 years of the deceased was taken into consideration as per the post mortem report in which his age was mentioned as 35 years. Counsel further stated that no fault could be found with the deposition of PW-1 simply on account of the fact that the statement of the witness was not recorded by the police under Section 161 of the Criminal Procedure Code.

The case as set up by the appellants in the compensation application was that on the fateful date i.e. 13.8.1995 at about 11.00 a.m. Shri Prem Parkash, the deceased was accompanying his brother-in-law Shri Bishamber Nath when he was going to Majnu Ka Tila for hiring a TSR. While two of them were crossing the road near Petrol Pump, Shri Prem Parkash was slightly ahead of Shri Bishamber Nath and at that time a bus bearing registration No. HR-12-A-1120 coming from the side of ISBT, being driven by its driver at a very fast speed and in a most rash and negligent manner struck against the deceased causing him multiple injuries. After the accident, the deceased was shifted to Hindu Rao Hospital from where he was referred to RML Hospital where he took his last breath on 13.8.1995. The said brother-in-law who was accompanying the deceased at the time of accident with the offending vehicle complained to the appellant. The testimony of the said eye witness remains unimpinged as nothing adverse, however, could be extracted from him in his cross-examination. Simply because the statement of the said witness was not recorded by the police during the course of investigation under Section 161 of the Cr.P.C., the creditworthiness of the said witness cannot be doubted. Similarly

the acquittal of the driver of the offending vehicle of the appellant by the criminal court cannot be taken to have any adverse effect on the findings reached by the Tribunal in an independent compensation case. The MACT cases have to be decided on their own footings and the same are not dependant upon the result or an outcome of a criminal case. In this regard the Hon'ble Apex Court in its judgment entitled **N.K.V. Bros. (P) Ltd. Vs. M. Kurumai Ammal & Ors.,** in *Air 1980 SC 1354* gave following observations:-

> "The plea that the criminal case had ended in acquittal and that, therefore, the civil suit must follow suit, was rejected and rightly. The requirement of culpable rashness under Section 304-A, I.P.C. is more drastic than negligence sufficient under the *law of Torts* to create liability. The quantum of compensation was moderately fixed and although there was, perhaps, a case for enhancement, the High Court dismissed the cross-claims also. Being questions of fact, we are obviously unwilling to reopen the holding on culpability and compensation."

Moreover, no evidence to the contrary was led in the present case by the appellants and therefore, the evidence adduced by the respondents to prove that case remains unrebutted. As regards the controversy raised on the age of the deceased, I find that there is no merit in the submission of counsel

for the appellant as the Tribunal has referred to the post mortem report in which the age of the deceased has been stated to be of 35 years of age. On the contention of counsel for the appellant that the bus of the appellant was not involved in the accident, the same also, I find equally devoid of any force as I do not find any logic in the plea that since the offending bus was being followed by some other bus bearing registration No. HR 12A 1121, therefore, on this analogy alone, it should be presumed that the vehicle was not involved in the accident. The testimony of the eye witness that the bus bearing registration No. HR-12-A-1120 was involved in the accident cannot be disbelieved merely because he was not made a witness in the criminal proceedings and also because his statement under Section 161 Cr.P.C. was not recorded.

There is no merit in this appeal. Dismissed.

November 12, 2007 **KAILASH GAMBHIR J.**

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